

Elec-81/R-3720.—The following decision of the Governor of Haryana is published for general information :—

In exercise of the powers conferred by clause (1) of Article 192 of the Constitution of India and in accordance with the opinion of the Election Commission of India set out in Appendix hereto, the Governor of Haryana is pleased to dismiss the petition, dated 27th May, 1980 of Shri Suban Khan, son of Husseina, resident of village Gopal Pur, tehsil Ferozepur-Jhirka, district Gurgaon, in which it was prayed that Shri Shakrulla Khan, son of Ch. Chahat Khan, M.I.A., Chairman, Haryana State Co-operative Development Federation Ltd., Chandigarh, may be disqualified from being a member of the Haryana Vidhan Sabha.

APPENDIX

Opinion

This is a reference from the Governor of Haryana seeking opinion of the Commission under article 192(2) of the Constitution on the question of alleged disqualification of Shri Shakrulla Khan, a sitting Member of Haryana Legislative Assembly, under article 191(1)(a) of the Constitution for holding an office of profit under the Government of Haryana.

The above question was raised before the Governor of Haryana in terms of article 192(1) of the Constitution by one Shri Suban Khan, resident of Gurgaon District, in a petition, dated the 27th May, 1980. It was alleged in that petition that Shri Shakrulla Khan who was elected to the Haryana Legislative Assembly from the Firozepur-Jhirka Assembly Constituency at the general election held in June, 1977, had become subject to disqualification under article 191(1)(a) of the Constitution for holding an office of profit under the Government of Haryana by reason of his appointment as Chairman of the Haryana State Co-operative Development Federation Ltd., on the 20th October, 1979 by the Registrar, Co-operative Societies, Haryana. It was further alleged that the terms and conditions for such appointment as Chairman were settled by the Registrar, who is an officer of the Haryana Government, in accordance with the Government Orders on the subject. According to those terms and conditions, he would get an honorarium of Rs 1,000 per month, besides several other perquisites.

It is not necessary to refer in detail to various other contentions of the petitioner and the counter contentions of Shri Shakrulla Khan in their written statements, rejoinder statements and at the hearing held on 11th November, 1980, 12th November, 1980 and 17th January, 1981, in view of the material changes brought about in the legal position in relation to the present case.

Section 3 of the Haryana State Legislature (Prevention of Disqualification) Act, 1974 provides that none of the offices mentioned therein, in so far as it is an office of profit under the Government of India or the Government of the State of Haryana, shall disqualify the holder thereof for being chosen as, or being a Member of the Legislature of the State of Haryana. The said section 3 was first amended by Haryana Ordinance No. 1 of 1980 issued by the Governor of Haryana on the 17th April, 1980. That Ordinance was later on replaced by Haryana State Legislature (Prevention of Disqualification) Amendment Act, 1980 (No. 24 of 1980). By the said amending Act, clause (e) of sub-section (1) of section 3 of the parent Act, of 1974 was amended as follows and it was deemed to have always been so amended :—

“(e) Chairman, Director or Member of any statutory or non-statutory body appointed or constituted by the State Government or the Union Government whether he is, or is not, in receipt of any remuneration including compensatory allowance during the performance of his duties”.

After the present reference was received by the Commission from the Governor on the 3rd June, 1980 and the enquiry into the alleged disqualification was in progress, the Governor of Haryana issued another ordinance, i.e. the Haryana Ordinance No. 2 of 1981 on the 22nd January, 1981. This ordinance has also now been replaced by the Haryana State Legislature (Prevention of Disqualification) Amendment Act, 1981 (No. 4 of 1981). By this amending Act, the above-quoted section 3(1)(e) of the 1974 parent Act has been further amended and the following new clause has been substituted for the above-quoted clause (e) of sub-section (1) of section 3 of the said Act and it is deemed to have always been so substituted :—

“(e) Chairman, Vice-Chairman, President, Vice-President, Director, or Member, whether elected, nominated or appointed either by the Union Government or State Government or any of its officers, of any statutory or non-statutory body, whether he is or is not, in receipt of any remuneration including compensatory allowance, during the performance of his duties”.

Thus, the disqualification, if any, incurred by the holders of the above offices, has been removed retrospectively. The office held by Shri Shakrulla Khan in the Haryana State Co-operative Development Federation Ltd., to which he was appointed by the Registrar of Co-operative Societies, Haryana is covered under the above-mentioned provisions of section 3(1)(e) of the 1974 Act, as amended.

Having regard to the above legal position, I am of the opinion and accordingly hold that Shri Shakrulla Khan has not become subject to disqualification under article 191(1)(a) of the Constitution. Accordingly, I tender my opinion to the above effect to the Governor of Haryana under article 192(2) of the Constitution.

New Delhi :
Dated, the 8th May, 1981.

S. L. SHAKDHER,
Chief Election Commissioner of India.

ISHWAR CHANDRA, Secy.